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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,053	05/31/2001	William M. Richardson	65807-0054	9152
10291	7590	10/12/2004	EXAMINER	
RADER, FISHMAN & GRAUER PLLC 39533 WOODWARD AVENUE SUITE 140 BLOOMFIELD HILLS, MI 48304-0610			NGUYEN, HANH N	
			ART UNIT	PAPER NUMBER
			2662	

DATE MAILED: 10/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/871,053

**Applicant(s)**

RICHARDSON, WILLIAM M.

**Examiner**

Hanh Nguyen

**Art Unit**

2662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on Application filed on 5/31/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20041005</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 16 and 37, it is not clearly stated what is meant by “ removing a contribution of a real component of the resistance of the link”.

Claims 38-41 are rejected because they depend on claim 37 respectively.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 & 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,324,168 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1 & 17 of the instant application merely broaden the scope of claim 1 of the Patent by

eliminating the steps of calculating at least a first order-differential of the response as a function of delay from the generation of the predetermined signal; determining where the first-order differential indicates an inflection; and identifying the inflection as the terminal.

Claims 9 & 28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 6,324,168 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 9 & 28 of the instant application merely broaden the scope of claim 8 of the Patent by eliminating the steps made by a system processor that search the response for the matched terminator by searching for an inflection point in induced voltage on the network cabling by calculating at least a first-order differential of the response as a function of delay from the generation of the predetermined signal.

It has been held that the omission an element and its function is an obvious expedient if the remaining elements perform the same function as before. In *Re Karlson*, 136 USPQ 184 (CCPA). Also note *Ex parte rainu*, 168 USPQ 375 (Bd.App.1969) ; omission of a reference element whose function is not needed would be obvious to one skilled in the art.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16 and 37-41 are rejected under 35 USC 103(a) as being unpatentable over Lee (US Pat. No. 5,737,316).

In claims 16 and 37, Lee discloses (see fig.4) a signal is transmitted from an analyzer 10 to a work station over a link 8 (generating a predetermined signal on the network link). A reflection signal is detected in response to an impedance mismatched (detecting a response of the link). See Abstract, & col. 10, lines 55-67. A low pass filter (see Fig.26) senses the contents of reflected signal to allow low frequency signal to pass through the filter (filtering the response of the link by removing a contribution of a real component of the resistance of the link). See col.9, lines 42-65. The link is identified to be defective if there is a mismatched impedance (identifying impedance problems of the link). See col.11, lines 1-5. Lee does not disclose displaying the filtered data to assist in the identification of impedance problems. The Office Action is taken that displaying the data onto a monitoring computer that functions as the analyzer 10 is well known and expected in the art. It would have been obvious to use the analyzer 10 to display the filtered data to identify the impedance problems of the link.

In claims 40 and 41, Lee discloses, in Fig.4, the signal is transmitted over link 8 to a computer network (predetermined signal occurs on a computer network). See Abstract.

In claims 38 and 39, Lee discloses a network module 2 (non-terminator location) that transmits a signal and detects the contents of the reflected signal. See Fig.5, col. 8, lines 27-35.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Richardson (Pat. 6,016,464) discloses Method and System for Characterizing terminations in a LAN.

Felker et al. (US Pat. No. 4,890,278) discloses Apparatus and Method for Calibrated Monitoring of Output Voltage Levels Of LAN Communication Devices.

Ernst et al. (US Pat. No. 5,381,348) discloses Token Ring LAN Testing Apparatus Using Time Delay Reflectory.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh Nguyen whose telephone number is 571 272 3092. The examiner can normally be reached on Monday-Friday from 8AM to 5PM. The examiner can also be reached on alternate

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou, can be reached on 571 272 3088. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Hanh Nguyen

A handwritten signature in black ink, appearing to read 'HNguyen', written over the printed name.

October 5, 2004